

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CANDI A. EBY,)	
)	CIV. S-05-106 GEB DAD
Plaintiff,)	
)	
v.)	ORDER
)	
CALIFORNIA DEPARTMENT OF YOUTH)	
AUTHORITY; JERRY HARPER, EEO)	
Director, YSUS ALI, et al.,)	
)	
Defendants.)	
_____)	

Defendant California Department of Youth Authority ("CYA") moves to dismiss Plaintiff's First Amended Complaint, arguing Plaintiff's state statutory and common law claims should be dismissed under 28 U.S.C. § 1367, and CYA challenges the viability and/or sufficiency of Plaintiff's federal claims. In Plaintiff's opposition to the motion, Plaintiff requests leave to file a Second Amended Complaint.

CYA is an agency of the State of California for purposes of the Eleventh Amendment immunity. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984) (holding that state agencies are "states" for purposes of the Eleventh Amendment). Since CYA has

1 asserted its Eleventh Amendment immunity against the state claims, the
2 state claims against CYA are dismissed under 28 U.S.C. § 1367. See
3 Freeman v. Oakland Unified Sch. Dist., 179 F.3d 846 (9th Cir. 1999)
4 (holding that the Eleventh Amendment applies to state claims brought
5 in federal court against a state agency).

6 Since Plaintiff's request for leave to file and serve a
7 Second Amended Complaint has not been opposed, that request will be
8 granted in part. Therefore, Plaintiff has 15 days from the date on
9 which this Order is filed to file a Second Amended Complaint.
10 However, Plaintiff does not have leave to again allege state claims
11 against the CYA. Therefore, the portion of CYA's motion which
12 challenges Plaintiff's federal claims is moot since Plaintiff has been
13 granted leave to file an amended complaint.

14 IT IS SO ORDERED.

15 Dated: May 11, 2005

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17 /s/ Garland E. Burrell, Jr.
18 GARLAND E. BURRELL, JR.
19 United States District Judge
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